

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/037,808	DOW ET AL.	
	Examiner	Art Unit	
	Julian Mercado	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to 8-5-04.
2.  The allowed claim(s) is/are 1-4,6-10 and 12-18.
3.  The drawings filed on 05 August 2004 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

**DETAILED ACTION**

*Remarks*

This Office action is responsive to applicant's amendment filed August 5, 2004.

Claims 1-4, 6-10 and 12-18 are pending.

*Drawings*

The drawings were received on August 5, 2004. These drawings are approved.

In view of the replacement drawings for Figures 1-3, the objection to the drawings has been withdrawn.

*Claim Rejections - 35 USC § 112*

The rejection of claims 11 and 19 under 35 U.S.C. 112, second paragraph is deemed moot in view of the cancellation of these claims.

*Claim Rejections - 35 USC § 102 and 103*

The following prior art rejections have been withdrawn:

- a. The rejection of claim 16 under 35 U.S.C. 102(b) based on Struthers (U.S. Pat. 4,492,741).
- b. The rejection of claims 1-4, 6, 10, 12, 16, and 17 under 35 U.S.C. 102(b) based on Marsh et al. (U.S. Pat. 5,445,905).

- c. The rejection of claim 4 under 35 U.S.C. 102(b) or 35 U.S.C. 103(a) based on Marsh et al.
- d. The rejection of claim 7 under 35 U.S.C. 103(a) based on Marsh et al. and Pellegrini et al. (U.S. Pat. 6,475,661 B1)
- e. The rejection of claim 18 under 35 U.S.C. 103(a) based on Marsh et al. and Hashimoto et al. (U.S. Pat. 4,614,693).

***Allowable Subject Matter***

Claims 1-4, 6-10 and 12-18 are allowed.

The examiner notes applicant's amendment to independent claim 1 which now incorporates the limitation of claim 5 (now canceled). The prior Office action objected to claim 5 as being dependent upon a rejected base claim, but indicated its allowability if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As independent claim 1 as amended is a rewritten form of claim 5, claims 1-4, 6-10 and 12-15 are allowed for the reasons set forth for claim 5 in the prior Office action.

Independent claim 17 as amended is notably modeled in accordance with the reasons for allowance of claim 5, in that claim 17 now recites "providing each said cathode with a membrane which allows OH- ions to pass through said membrane while inhibiting a flow of hydrogen peroxide through said membrane thereby preventing migration of said catholyte through the porous cathode and into the anolyte stream." Thus, claims 17-19 are allowed for the same reasons set forth for claim 5 in the prior Office action.

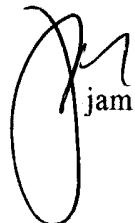
Art Unit: 1745

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



jam



Patrick Ryan  
SPE - 1745